AMENDED IN SENATE MAY 8, 2000

AMENDED IN SENATE APRIL 6, 2000

SENATE BILL No. 2198

Introduced by Senator Soto

March 16, 2000

An act to add Section 50199.19 to the Health and Safety Code, and to add Section 23610.6 to the Revenue and Taxation Code, relating to housing, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 2198, as amended, Soto. Tax credits: second mortgages.

Existing law designates the California Tax Credit Allocation Committee as the state's housing credit agency for purposes of allocating federal housing tax credits. The Bank and Corporation Tax Law authorizes various credits against the taxes imposed by that law.

This bill would authorize a homeownership tax credit, as specified, against those taxes for each income year beginning on or after January 1, 2000, for qualified lenders, as defined. The bill would also authorize the committee to allocate housing tax credits to lenders that make qualified 2nd mortgage loans to qualified low-income homebuyers.

The bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the ‘‘Homeownership Tax Credit Act of 2000.’’

SEC. 2. Section 50199.19 is added to the Health and Safety Code, to read:

50199.19. (a) The Legislature finds and declares all of the following:

(1) It is paramount to sustain a robust economy in California and to ensure strong communities and schools to promote broader homeownership across economic groups.

(2) While more Americans (67 percent) own their homes today than in any time in American history, homeownership in California lags well behind the rest of the states, at 57 percent, with only Hawaii at a lower percentage.

(3) California used to parallel the rest of the nation on housing costs and affordability, yet today the state has seven of the nation’s 10 least affordable communities. The median new home price in this state exceeds the national median price by 37.5 percent.

(4) To increase California’s homeownership rate to the national average, the state needs one million new homeowners.

(5) Home prices are so high in California that the average newly formed household would have to nearly double its income to qualify to buy the median-priced home.

(6) Homeownership among lower income families lags significantly behind the general population. Low-income homeownership rates are 45 percent while higher-income rates are at 86 percent.

(7) These homeownership rates matter because home ownership is the primary path to the middle class for many families. Homeownership has been shown to reduce crime, while increasing school retention and graduation, civic engagement, children’s future earning potential, and overall life satisfaction.

(8) Home equity represents two-thirds of all low-income family wealth. The median wealth of nonelderly low-income homeowners is 12 times greater than the median wealth of similar renters with the same income.

(b) The Legislature further finds and declares that a tax credit program that encourages lenders to make second mortgage loans would significantly increase homeownership rates among ~~low- and moderate-income~~ *low-income* households. A second mortgage can reduce the amount necessary for the first mortgage loan and thus reduce the amount of the downpayment. The second mortgage can therefore also reduce the monthly loan payments on the first mortgage.

SEC. 3. Section 23610.6 is added to the Revenue and Taxation Code, to read:

23610.6. (a) For each income year beginning on or after January 1, 2001, there shall be allowed as a credit against the net tax, as defined in Section 23036, a ‘‘homeownership tax credit,’’ as specified in this section.

(1) For purposes of this section, the amount of the homeownership tax credit determined under this section for any income year in the credit period shall be an amount equal to the applicable percentage of the homeownership tax credit amount allocated to the taxpayer by the California Tax Credit Allocation Committee in the credit allocation year under subdivision (b).

(2) For purposes of this section, the California Tax Credit Allocation Committee shall prescribe the applicable percentage for any year in which the taxpayer is a qualified lender. The percentage with respect to any month in the credit period with respect to the taxpayer shall be percentages which will yield over the period amounts of credit under paragraph (1) which have a present value equal to 100 percent of the homeownership tax credit amount allocated to the taxpayer under subdivision (b).

(3) The present value under paragraph (2) shall be determined in the same manner as the low-income

housing credit under Section 42(b)(2)(C) of the Internal Revenue Code.

(b) (1) The annual amount of credit granted pursuant to this section shall not exceed $________, provided that the aggregate amount of the credit granted pursuant to this section for any year subsequent to the year this section is enacted may exceed $________ per calendar year by an amount equal to any unallocated credits under this section for the preceding calendar year or years.

(2) For purposes of this paragraph, ‘‘approved allocation plan’’ means a written plan, certified by the Secretary, that includes all of the following:

(A) Selection criteria for the allocation of credits to qualified lenders that is based on a process in which lenders submit bids for the value of the credit, and that gives priority to qualified lenders with qualified home ownership tax credit loans which are prepaid during a calendar year, for credit allocations in the succeeding calendar year.

(B) An assurance that the Tax Credit Allocation Committee will not allocate in excess of 10 percent of the homeownership tax credit amount for the calendar year for qualified homeownership tax credit loans that are neighborhood revitalization project loans.

(C) A procedure that the Tax Credit Allocation Committee will follow in monitoring for noncompliance with the provisions of this section and in notifying the Franchise Tax Board of noncompliance with respect to which the Tax Credit Allocation Committee becomes aware.

(3) For purposes of this section, ‘‘qualified lender’’ means a lender who meets all of the following conditions:

(A) Is an insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c))), insured credit union (as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1781)), community development financial institution (as defined in Section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)), or nonprofit community development corporation (as defined in Section 613 of the Community Economic Development Act of 1981 (42 U.S.C. 9802)).

(B) Makes available, through the lender or the lender's designee, prepurchase homeownership counseling for mortgagors.

(C) During the one-year period beginning on the date of the credit allocation, originates not less than 100 qualified homeownership tax credit loans in an aggregate amount not less than the amount of the bid of the lender for the credit allocation.

~~(c) For purposes of this section:~~

(c) For purposes of this section, "qualified homeownership tax credit loan" means a loan originated and funded by a qualified lender which is secured by a second lien on a residence and that meets all of the following conditions:

(1) The proceeds from the loan are applied exclusively for either of the following:

(A) To acquire the residence.

(B) To substantially improve the residence in connection with a neighborhood revitalization project.

(2) The principal amount of the loan is equal to an amount which is not less than 18 percent of the purchase price or appraised value of the residence securing the loan, and

(A) Not more than the lesser of 20 percent of the purchase price or forty thousand dollars ($40,000); or

(B) Not more than the lesser of 20 percent of the purchase price or appraised value or fifty-five thousand dollars ($55,000) in the case of a neighborhood revitalization project loan.

(3) The proceeds of the loan are not used for settlement or other closing costs of the transaction in an amount in excess of 4 percent of the purchase price or appraised value of the residence securing the loan.

(4) The origination fee paid with respect to the loan does not cause the aggregate amount of origination fees paid with respect to any loans secured by the residence:

(A) In the case of a neighborhood revitalization project loan, to exceed one percent of the appraised value of the residence which secures the loan, and

(B) In the case of any other loan, to exceed two percent of the appraised value of the residence.

(5) The servicing fees of the loan are allocated from interest payments made with respect to the loan.

(6) The loan is either:

(A) A fixed rate loan amortized over a period of not more than 30 years, or any lesser period of time as determined by the lender or the Tax Credit Allocation Committee, that meets all of the following criteria:

(i) The rate of interest of the loan does not exceed the greater of:

(I) The excess of the prime lending rate in effect as of the date on which the loan is originated, over 5.5 percent.

(II) Three percent.

(B) A 25 year balloon payment loan that meets all of the following criteria:

(i) No payment is due on the loan until the earlier of the end of the 25 year term or the date on which the residence that secures the loan is disposed of.

(ii) Does not prohibit early repayment of the loan.

(iii) Requires payment on the loan if the mortgagor receives any portion of the equity of the residence as part of a refinancing of any loan secured by the residence.

(iv) The rate of interest of the loan is zero percent.

(d) (1) After calendar year 2000, the amounts under paragraph (2) of subdivision (c) shall be increased by an amount equal to the amount, multiplied by the housing price adjustment for the calendar year.

(2) For purposes of paragraph (1), the housing price adjustment for any calendar year is the percentage, if any, by which the housing price index for the preceding calendar year, exceeds the housing price index for calendar year 2000.

(3) For purposes of paragraph (2), the housing price index means the housing price index published by the Federal Housing Finance Board (as established in Section

2A of the Federal Home Loan Bank Act (12 U.S.C. 1422a)) for the calendar year.

~~(1) “Qualified homeownership tax credit loan” means a loan originated and funded by a qualified lender which is secured by a second lien on a residence, but only if all of the following conditions are met:~~

~~(A) The requirements of subdivisions (d), (e), and (f) are met,~~

~~(B) Subject to subparagraph (F), (H), and (I), the proceeds from the loan are applied exclusively for either of the following:~~

~~(i) To acquire the residence.~~

~~(ii) To substantially improve the residence in connection with a neighborhood revitalization project.~~

~~(C) The principal amount of the loan is equal to an amount which is:~~

~~(i) Not less than 18 percent of the purchase price of the residence securing the loan, and~~

~~(ii) Not more than the lesser of the following:~~

~~(I) Twenty percent of the purchase price.~~

~~(II) Forty thousand dollars ($40,000).~~

~~(D) In the case of a neighborhood revitalization project loan, subparagraph (C) is applied by substituting “purchase price or appraised value” for “purchase price,” and fifty five thousand dollars ($55,000) for forty thousand dollars ($40,000).~~

~~(E) The loan is amortized over a period of not more than 30 years (or any lesser period of time as determined by the lender or the Tax Credit Allocation Committee (as applicable)), or as described in paragraph (2).~~

~~(F) The proceeds of the loan are not used for settlement or other closing costs of the transaction in an amount in excess of 4 percent of the purchase price of the residence securing the loan.~~

~~(G) The rate of interest of the loan does not exceed the greater of:~~

~~(i) The excess of the prime lending rate in effect as of the date on which the loan is originated, over 5.5 percent.~~

~~(ii) Three percent.~~

~~(H) The origination fee paid with respect to the loan does not cause the aggregate amount of origination fees paid with respect to any loans secured by the residence:~~

~~(i) In the case of a neighborhood revitalization project loan, to exceed one percent of the appraised value of the residence which secures the loan, and~~

~~(ii) In the case of any other loan, to exceed two percent of the appraised value of the residence, and~~

~~(I) (i) The servicing fees of the loan are allocated from interest payments made with respect to the loan.~~

~~(ii) The servicing fees of the loan may not:~~

~~(I) In the case of a neighborhood revitalization project loan, exceed a total of 38 basis points.~~

~~(II) In the case of any other loan, when added to the fees of any other loan secured by the residence, exceed a total of 63 basis points.~~

~~(2) (A) A loan is a balloon payment loan if the loan meets all of the following conditions:~~

~~(i) Meets the requirements of subparagraphs (B) and (C),~~

~~(ii) Is for a period of 25 years and, except as provided in clause (iv), no payment is due on the loan until the sooner of:~~

~~(I) The end of the period.~~

~~(II) The date on which the residence which secures the loan is disposed of.~~

~~(iii) Does not prohibit early repayment of the loan.~~

~~(iv) Requires payment on the loan if the mortgagor receives any portion of the equity of the residence as part of a refinancing of any loan secured by the residence.~~

~~(B) Notwithstanding subparagraph (G) of paragraph (1), the rate of interest of the loan is zero percent.~~

~~(C) Notwithstanding subparagraph (I) of paragraph (1), there shall be no servicing fees in connection with the loan.~~

~~(3) (A) In the case of a calendar year after 2000, the amounts under subparagraphs (C) and (D) of paragraph (1) shall be increased by an amount equal to the amount, multiplied by the housing price adjustment for the calendar year.~~

~~(B) For purposes of subparagraph (A), the housing price adjustment for any calendar year is the percentage (if any) by which the housing price index for the preceding calendar year, exceeds the housing price index for calendar year 2000.~~

~~(C) For purposes of subparagraph (B), the housing price index means the housing price index published by the Federal Housing Finance Board (as established in Section 2A of the Federal Home Loan Bank Act (12 U.S.C. 1422a)) for the calendar year.~~

~~(d)~~

(e) (1) A loan meets the requirements of this subdivision if it is made to a mortgagor who meets all of the following conditions:

(A) Whose family income for the year in which the mortgagor applies for the loan is ~~100~~ *80* percent or less of the area median gross income for the area in which the residence which secures the mortgage is located.

(B) For whom the loan would not result in a housing debt-to-income ~~ration~~ *ratio*, with respect to the residence securing the loan, or total debt-to-income ratio which is greater than the guidelines set by the Federal Housing Administration (or any other ratio as determined by the Tax Credit Allocation Committee or lender if the ~~ration~~ *ratio* is less than the guidelines).

(C) Who attends ~~pre-purchase~~ *prepurchase* homeownership counseling provided by the qualified lender or the lender's designee.

(D) Who has not held title, in part or in whole, on a residential property within the three years prior to the application for the loan.

(2) For purposes of this subdivision and subdivision ~~(h)~~ *(i)*, the family income of a mortgagor and area median gross income shall be determined in accordance with Section 143(f)(2) of the Internal Revenue Code.

~~(e)~~

(f) A loan meets the requirements of this subdivision if it is secured by a residence that meets both of the following requirements:

(1) Is a single-family residence (including a manufactured home) which is the principal residence of the mortgagor, or can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided.

(2) Is purchased by the mortgagor with a down payment in an amount not less than the lesser of two percent of the purchase price *or appraised value*, or two thousand five hundred dollars ($2,500).

~~(f)~~

(g) (1) For purposes of this section, ‘‘credit period’’ means the period of 10 taxable years beginning with the taxable year in which a home ownership tax credit amount is allocated to the taxpayer.

(2) (A) The credit allowable under subdivision (a) with respect to any taxpayer for the first income year of the credit period shall be determined by substituting for the applicable percentage under paragraph (2) of subdivision (a) the fraction:

(i) The numerator of which is the sum of the applicable percentages determined under paragraph (2) of subdivision (a) as of the close of each full month of the year, during which the taxpayer was a qualified lender, and (ii) the denominator of which is 12.

(B) Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the first income year of the credit period shall be allowable under subsection (a) for the first income year following the credit period.

(3) If a qualified homeownership tax credit loan is disposed of during any year for which a credit is allowable under subdivision (a), the credit shall be allocated between the parties on the basis of the number of days during the year the mortgage was held by each and the portion of the total credit allocated to the qualified lender which is attributable to the mortgage.

~~(g)~~

(h) If, during the income year, a qualified homeownership tax credit loan is repaid prior to the expiration of the credit period with respect to the loan,

the amount of the homeownership tax credit attributable to the loan is no longer available under ~~division~~ *subdivision* (a). For purposes of the preceding sentence, the tax credit is allowable for the portion of the year in which the repayment occurs for which the loan is outstanding, determined in the same manner as provided in paragraph (A) of paragraph (2) of subdivision (b).

~~(h)~~

(i) (1) If, during the income year, any taxpayer described in paragraph (3) disposes of an interest in a residence with respect to which a homeownership tax credit amount applies, then the taxpayer's tax ~~imposed by this part~~ for the income year shall be increased by 50 percent of the gain, if any, on the disposition of the interest.

(2) Paragraph (1) shall not apply to any disposition made under any of the following circumstances:

(A) By reason of death.

(B) Which is made on a date that is more than 10 years after the date on which the qualified homeownership tax credit loan secured by the residence was made.

(C) In which the purchaser of the residence assumes the qualified home ownership tax credit loan secured by the residence.

(3) A taxpayer is described in this paragraph if, on the date of the disposition, the family income of the mortgagor is 115 percent or more of the area median gross income as determined under subparagraph (A) of paragraph (1) of subdivision (d) for the year in which the disposition occurs.

(4) The qualified lender that makes a qualified homeownership tax credit loan to a mortgagor shall, at the time of settlement, provide a written statement informing the mortgagor of the potential recapture under this subdivision.

(A) ''Neighborhood revitalization project loan'' means a loan secured by a second lien on a residence, the proceeds of which are used to substantially improve the residence in connection with a neighborhood revitalization project.

(B) ‘‘Neighborhood revitalization project’’ means a project of sufficient size and scope to alleviate physical deterioration and stimulate investment in either of the following:

~~(i)~~ *(j)* A geographic location within the jurisdiction of a unit of local government, but not the entire jurisdiction, designated in comprehensive plans, ordinances, or other documents as a neighborhood, village, or similar geographic designation.

(ii) The entire jurisdiction of a unit of local government if the population of such jurisdiction is not in excess of 25,000.

~~(j)~~ *(k)* (1) The Franchise Tax Board may, upon a finding of noncompliance, revoke any qualified homeownership tax credit amounts allocated by Tax Credit Allocation Committee to a qualified lender.

(2) The *Tax* Credit Allocation Committee shall submit to the Franchise Tax Board, at the time and in the manner as agreed upon by the Franchise Tax Board and the Tax Credit Allocation Committee, an annual report specifying both of the following:

(A) The homeownership tax credit amount allocated to each qualified lender for the year.

(B) With respect to each qualified lender:

(i) The principal amount of the aggregate qualified homeownership tax credit loans made by the lender in the year and the outstanding amount of the loans in the year.

(ii) The number of qualified homeownership tax credit loans made by the lender in the year.

~~(k)~~ *(l)* The Tax Credit Allocation Committee shall prescribe regulations as may be necessary or appropriate to carry out the purposes of this section.

~~(l)~~ *(m)* No portion of the unused business credit for any taxable year which is attributable to the homeownership tax credit determined under Section 45D may be carried back to a taxable year ending before the date of the enactment of this section.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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